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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 JOHN BUCKLEY,

13 Plaintiff,

14 vs.

15 ANDREW SAUL,
16 Commissioner of Social Security,

17 Defendant.

) Case No.: 2:20-cv-01724-VCF

) **MOTION FOR EXTENSION OF TIME TO FILE
CERTIFIED ADMINISTRATIVE RECORD
AND ANSWER; DECLARATIONS OF JEBBY
RASPUTNIS AND CHRISTIANNE VOEGELE;
[PROPOSED] ORDER**

) **(SECOND REQUEST)**

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1 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through
2 his undersigned attorneys, hereby moves for a 60-day extension of time to file an Answer to Plaintiff’s
3 Complaint and the electronic Certified Administrative Record (eCAR), changing the date on which the
4 Answer is due from the current due date of February 12, 2021 to March 15, 2021. Counsel for Defendant
5 contacted Plaintiff via email on February 5, 2021. Plaintiff objects to this request.
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7 Defendant makes this request in good faith and for good cause, because the eCAR, which must be
8 filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health
9 emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security
10 Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible
11 for producing the eCAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). Prior to the
12 COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all hearing recordings,
13 which are part of the administrative record, were downloaded onto compact discs and encrypted. OAO
14 securely routed the encrypted discs to a private contractor through a daily pickup and delivery service at
15 the Official Duty Station (ODS) in Falls Church, Virginia. The private contractor would transcribe the
16 hearing recording and send the paper copy of the hearing transcript back to OAO. OAO personnel would
17 then scan the hearing transcript into the electronic record or place the hearing transcript in the paper case
18 file. Thereafter, OAO personnel would assemble the administrative record in a prescribed order. After
19 the advent of COVID-19, the Agency has taken a number of concrete steps to transition its years-old in
20 person CAR preparation process to a fully virtual one.
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23 As detailed in the attached declarations from Jebby Rasputnis, Executive Director of the OAO,
24 and Christianne Voegele, Chief of the Court Case Preparation and Review Branch 1, and Acting Chief of
25 the Court Case Preparation and Review Branch 3, of OAO, OAO has been actively pursuing mitigation
26 efforts to allow the remote preparation of administrative records to ensure a continuity of operations. For

1 cases in which the private contractors were already in possession of hearing recordings for transcription,
2 with the assistance of the Office of Acquisitions and Grants (OAG), OAO received approval to receive
3 these transcripts from the private contractors via secured email, e.g., using password protection and
4 redacted Social Security Numbers. In April 2020, OAO began receiving such hearing transcripts from
5 private contractors via secured email.
6

7 For cases in which OAO had not yet submitted recordings to the private contractors before March
8 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these cases. In May
9 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for
10 transcription. Through the month of May, OAO and the contractors worked to resolve technical issues
11 that arose, particularly with large files.
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13 As indicated by the Rasputnis declaration, the Commissioner must navigate and overcome five
14 simultaneous challenges as it transitions the preparation of eCARs from an in-person process to a
15 completely virtual one:

- 16 1. Obtaining the appropriate technology, subject to Federal purchasing rules;
- 17 2. Retraining staff on the new procedures and new technology, which differ quite dramatically
18 from the old ones;
- 19 3. Adhering to the Federal government protections for personally identifiable information (PII);
- 20 4. Working with outside vendors for transcription services, including obtaining a new vendor
21 subject to Federal contracting rules; and
- 22 5. Completing security clearance processes for any new employees *and* any employees of new
23 vendors before allowing access to PII and other sensitive information of the vendors. While the agency
24 has worked hard to overcome challenges related to this transition, the agency estimates that it is
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1 producing CARs at approximately one-third of the level of production pre-COVID, with the hopes of
2 increasing that rate over the next several weeks.

3 In this case, given the volume of pending cases, Defendant requests an additional 60-day
4 extension in which to respond to the Complaint.

5 Accordingly, Defendant requests an extension of 60 days in which to file the Answer, changing
6 the date on which the Answer is due from the current due date of February 12, 2021, to the new due date
7 of March 15, 2021.

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10 Dated: February 8, 2021

11 Respectfully submitted,

12 NICHOLAS A. TRUTANICH
United States Attorney

13 /s/ Chantal R. Jenkins
14 Chantal R. Jenkins
Special Assistant United States Attorney

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17 IT IS SO ORDERED:
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UNITED STATES MAGISTRATE JUDGE

20 2-8-2021

21 DATED: _____

CERTIFICATE OF SERVICE

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 160 Spear Street, Suite 800, San Francisco, California 94105. I am not a party to the above-entitled action. On the date set forth below, I caused service of **MOTION FOR EXTENSION OF TIME TO FILE CERTIFIED ADMINISTRATIVE RECORD AND ANSWER; DECLARATIONS OF JEBBY RASPUTNIS AND CHRISTIANNE VOEGELE; [PROPOSED] ORDER**; on the following parties through regular U.S. mail:

John Buckley
9501 Canyon Hollow Avenue
Las Vegas, NV 89149

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 8, 2021

/s/ Chantal R. Jenkins
CHANTAL R. JENKINS
Special Assistant United States Attorney